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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 721

HARRY FRANCIS,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

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SENTINEL PRINTING INC., INDIANAPOLIS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 721

HARRY FRANCIS,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

No. 9698

PETITION FOR REHEARING

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

Comes now the petitioner, Harry Francis, and respectfully petitions this Honorable Court for a rehearing in the above entitled cause, for each of the following reasons and upon each of the following grounds:

1. The evidence is as consistent with the innocence of the petitioner as with his guilt.

2. In order for the petitioner to be convicted of the crime charged in the indictment, his guilt must be proved by sub-

stantial evidence and the jury may not be left to conjecture or suspicion.

3. The jury may not speculate upon the guilt of the petitioner, or choose between equally permissive inferences of guilt or innocence.

AUTHORITIES

Glasser v. United States, 315 U. S. 60 (116 F. 2, 690, certiorari granted 313 U. S. 551).

United States v. Bruno, 67 Supreme Court 211 (Reversing 153 F. 2, 843).

Scott v. United States, 145 F. 2, 405 (Certiorari denied, 323 U. S. 801).

In the brief in opposition to the petition for a writ of certiorari, filed in this cause by the Solicitor General, it is stated:

> Both courts below having upheld the sufficiency of the evidence to warrant submission of the case to the jury, we submit that there is no occasion for further review by this Court (Br. 2-3).

We sincerely believe that the evidence introduced in the trial of this cause falls short of the degree of proof required to sustain a verdict of guilty, therefore, there is occasion for further review by this Court. Petitioner's liberty is at stake, and we respectfully suggest that petitioner should not be precluded from having his case reviewed by this Honorable Court merely because the District Court and the Court of Appeals found the evidence sufficient to warrant submission of the case to the jury. We plead with the Court to heed the words of Circuit Judge Sanborn, in the case of Sykes v. United States, 204 Fed. 909:

> The defendant in this case may not be lawfully deprived of his liberty for five years without proof of his guilt beyond a reasonable doubt much less without any substantial evidence of it, and this court cannot disregard his appeal, sit in silence, and permit the perpetration of such an injustice.

It is true that the jury is the judge of the facts and the credibility of the witnesses, however, it is also true that in

the event the evidence is as consistent with the innocence of the petitioner as with his guilt, a verdict of guilty should not be permitted to stand and the accused should not be fined and imprisoned. Glasser v. United States, 315 U. S. 60.

This Court has held that to be convicted of a crime, the crime charged must be proved and the jury may not be left to conjecture or suspicion. United States v. Bruno, 67 Supreme Court 211.

This Court has also approved the principle of law that the jury may not speculate upon the guilt of the defendant, or choose between equally permissive inferences of guilt or innocence. Scott v. United States, 145 F. 2, 405, certiorari denied 323 U. S. 801.

We shall not review the evidence submitted in the trial of this cause, which was discussed fully in petitioner's brief in support of his petition for a writ of certiorari. We do wish to re-emphasize the fact that the petitioner's testimony was not contradicted in any respect, including his statement that the contributions which he received from divers persons, for the purposes stated, were returned to all of the contributors except the three (3) persons who testified as witnesses for the Government in the trial of this cause. The reason for not returning the contributions to these three persons was explained by the petitioner.

In our opinion the verdict of the jury in this case resulted solely from conjecture and suspicion on the part of the jurors. The Court will note that the Government failed to call as witnesses all of the persons who contributed to the funds received by the petitioner. The record is silent as to most of them. The petitioner produced several witnesses residing in or near the situs of the trial, who testified that they had contributed money for the purposes indicated and that, upon failure of the General Assembly of California

to pass the desired legislation, these witnesses received their original checks or their equivalent in money from the petitioner.

We cannot believe that it is the law that the fact that the petitioner had not refunded the sum of One Hundred Dollars to the three witnesses for the Government, who had not sent bank checks to petitioner as requested but had sent cashier's checks or drafts or postal money orders to the petitioner, which petitioner presented for payment for the reasons stated, whereas the uncontradicted evidence proves that petitioner had returned the bank checks to all other contributors remitting by check, constitutes sufficient and substantial evidence that the petitioner devised a scheme and artifice to defraud those persons who testified for the Government or any other persons who contributed.

Nor do we believe that the petitioner's plan or scheme to procure funds for the purpose indicated was a fraudulent one.

We respectfully make this final appeal to this Honorable Court for a rehearing and that a writ of certiorari issue herein.

Respectfully submitted,

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June 10, 1949.

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